Filed 7/15/19 Olson v. Hornbrook Community Services Dist. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

KIMBERLY R. OLSON, Plaintiff and Appellant, v. HORNBROOK COMMUNITY SERVICES DISTRICT, Defendant and Respondent.	C086760 (Super. Ct. No. SCSCCVPT17327)

Following the sustaining of a demurrer without leave to amend, plaintiff Kimberly Olson appeals the dismissal of her suit under the Brown Act (the Act)[1] against the Hornbrook Community Services District (the District) and the trial court's attorney fee award. She contends the court erred by finding her complaint failed to state a cause of

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[1] Government Code section 54950 et seq. Further section references are to the Government Code unless otherwise indicated.

action and was clearly frivolous. She also challenges the court's striking of a motion for failing to pay the fax filing fee after she was granted a fee waiver. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The District timely posted its agenda for its January 24, 2017, meeting. As is relevant here, item 2 allowed for public comment at the start of the meeting "on any matter within the jurisdiction of the [District] that is NOT ON THE AGENDA. . . . Any person wishing to address the [District's Board] on an item ON THE AGENDA will be given the opportunity at that time." The agenda also contained a consent agenda, which included as item 4b to "[a]pprove bills and authorize signatures on Warrant Authorization Form for District expenses received through January 24, 2017." The agenda did not list specific bills to be paid or warrants to be authorized.

At the January 2017 meeting, "objection was made by members of the public as to the limitations imposed upon the public comment topics as being in violation of the Brown Act . . . , specifically, that persons wishing to comment on agendized items were required to sit through the entire meeting until those items came up for discussion, rather than being able to speak their piece [*sic*] and then leave at the beginning of the meeting. . . . Additionally, a specific objection by the public was made when the consent agenda came up for discussion on the basis that ***none*** of the individual items to be transacted or discussed by the Board as those things comprising (4b) were listed on the agenda . . . , which constituted a violation" of the Act. In response to the public's objection, the Board's president and secretary stated that the Board's conduct did not violate the Act and that the Board would continue with its practice regarding public comment and the consent agenda into the future.

Nearly a month after the meeting, plaintiff submitted a cure and correct notice and cease and desist letter to the District and its secretary. Receiving no response, she initiated suit by filing a complaint on March 23, 2017. The operative complaint alleged the District "improperly restricted the topics of public comment, discussed and

considered multiple, non-agendized, non-described items supposedly under the rubric of 'consent calendar', and thereafter approved an improperly-made motion to pay various amounts relating to numerous of the non-agendized consent items to persons and/or entities in amounts that were also not described anywhere in the agenda." The complaint also raised a cause of action for waste of taxpayer funds predicated upon the District's "creation, printing, distribution, and ratification of improper agendas that fail to comply with the Brown Act . . . ."

The District, through counsel, filed a declaration of demurring party in support of an automatic extension purporting to have attempted to meet and confer with plaintiff. Plaintiff filed a motion to strike that declaration arguing that counsel was not entitled to an extension because he had failed to meet and confer with her by phone as mandated by Code of Civil Procedure section 430.41. The court denied plaintiff's motion.

The District filed a demurrer to plaintiff's complaint arguing the description contained in the consent agenda was sufficient and that the Board complied with the Act concerning public comment. Plaintiff filed a motion to strike the District's demurrer arguing the District did not comply with Code of Civil Procedure section 430.41's requirement to meet and confer before filing the demurrer. She also filed a declaration in support of that motion. Plaintiff filed these motions via fax and requested a fee waiver of the fax fees, noting that she had been granted a fee waiver previously under California Rules of Court, rule 3.55. The court denied plaintiff's fee waiver, noting that "[p]ursuant to California Rules of Court[, rule] 10.815 and [Government Code] §70631 the Court can charge reasonable fees for services and products and that fax fee[s] [have] been approved by this Court as a courtesy at $1.00 per page. This fee is not covered under the fee waiver. All fax fees must be paid within forty-eight (48) hours or the pleading submitted via fax may be stricken and deemed not having been submitted. The local practice has been that parties bring in a check, send in the payment or otherwise provide for the payment of this fee. When that is not received, the court as a courtesy sends a notice with

a calendar date approximately in 21 days, that the fee has to be paid or the pleading will be stricken." The court directed the clerk to send the fax filing notice to plaintiff.

Plaintiff later objected to the court's denial of her fee waiver request and argued the fax filing fee was included in the filing fees originally waived by the court. Three months after denying plaintiff's request to waive the fax filing fee, the court heard the District's demurrer and plaintiff's motion to strike. It noted that it had previously denied a similar motion and then struck plaintiff's more recent motion to strike for failure to pay the fax filing fees by the time the motion was heard. The court also sustained the District's demurrer. In the judgment of dismissal, the court further found the District could seek attorney fees and reserved its ruling on that issue until it could be briefed by the parties.

The trial court later awarded the District $8,160 in attorney fees and $240.78 in expenses. When doing so, it found plaintiff's claim was frivolous because it was without merit and because plaintiff had previously filed two complaints against the District challenging the District's August and September 2016 agendas which were also dismissed.

Plaintiff appeals.

DISCUSSION

I

We Need Not Address Plaintiff's Challenge To The Court's Striking Of Her Motion For Failing To Pay The Fax Filing Fee

While plaintiff was granted a fee waiver, the trial court struck her motion to strike the District's demurrer for failing to pay the fax filing fee reasoning that this fee was not included in plaintiff's initial fee waiver. Plaintiff contends this was error and inherently prejudicial. We need not address the merit of plaintiff's claim because she has not shown prejudice.

" 'No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, *or for any error as to any matter of procedure*, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has *resulted in a miscarriage of justice*.' " (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107-1108, citing Cal. Const, art. VI, § 13.)

Plaintiff never paid the fax filing fee and cannot show prejudice in that regard. Instead, she argues a violation of due process because she was denied the right to be heard as to the motion to strike. The merits of plaintiff's motion, however, were heard when plaintiff moved to strike the District's declaration of demurring party in support of an extension of time. Plaintiff moved to strike that pleading for the same reasons she moved to strike the District's demurrer. The court denied the motion to strike finding it without merit.

In any event, "Code of Civil Procedure section 430.41 does not contain any penalties for the failure to follow the meet-and-confer process set forth in subdivision (a)(1). Indeed, subdivision (a)(4) of that section provides that '[a]ny determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.' Thus, even if the District did not comply with the meet-and-confer requirements, we do not agree with plaintiff[] that the consequence of that failure is" to strike the demurrer. (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 515 (*Olson*).) Because plaintiff was not prejudiced by the trial court's striking of her motion to strike, we need not address the merits of her claim.

II

The Trial Court Properly Sustained The District's Demurrer[2/3]

"The purpose of a demurrer is to test whether, as a matter of law, the properly pleaded facts in the complaint state a cause of action under any legal theory. [Citation.] On appeal from a judgment dismissing the complaint after the trial court has sustained a demurrer without leave to amend, we assume the truth of all facts properly pleaded, as well as facts of which the trial court properly took judicial notice. [Citation.] We do not assume the truth of contentions, deductions, or conclusions of law. [Citation.] With respect to the Act, we begin by noting that where, as is the case here, the facts are undisputed, we determine a local agency's compliance de novo. [Citation.]

"We review the trial court's decision denying leave to amend for abuse of discretion. [Citation.] The plaintiff has the burden of proving there is a reasonable possibility an amendment would cure the defect. [Citation.] Where there is no reasonable possibility the plaintiff can cure a defect in a complaint with an amendment, an order sustaining a demurrer without leave to amend is not an abuse of discretion." (*Olson, supra,* 33 Cal.App.5th at pp. 516-517.)

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2 The arguments addressed in this section were addressed in our published decision in *Olson*, wherein plaintiff and Roger Gifford challenged several items in the District's August and September 2016 agendas. (*Olson*, *supra*, 33 Cal.App.5th at pp. 516-518, 522.) At that time, only Gifford presented claims regarding the consent agenda and public comment period provided for in the District's January 2017 agenda. (*Id.* at p. 512.) We rejected Gifford's claims regarding the January 2017 agenda, but concluded there was merit to his and plaintiff's challenges to the August and September 2016 agenda items. (*Id*. at pp. 518, 521, 525-527.)

3 Plaintiff does not argue in her opening brief that the trial court erred by finding her challenge to the public comment period lacking in merit. The District, however, argues the issue on the merits. In turn, plaintiff responds to the District's argument in her reply brief. Thus, we will address the contention because it is fully briefed.

Plaintiff's complaint alleged the District failed to comply with the notice requirements of the Act when stating it would pay multiple unspecified monthly expenses instead of listing each item to be paid. The complaint also alleged the District violated the Act by limiting public comment so that members of the public could not speak on agenda items during the public comment period at the start of the meeting and had to wait until the specific agenda item came up for discussion.

A

The Brown Act

"The Act is intended to ensure that the deliberations and actions of the governing bodies of local agencies are open and public and that provision is made for meaningful public access to their decisionmaking. (§ 54950.) To that end, the Act requires the meetings of such bodies to be open to the public, held on a regular schedule, and conducted in accordance with an agenda available in advance of the meeting. (§§ 54953, 54954, 54954.2.) Conversely, the Act prohibits action on items not placed on the agenda and severely restricts the type of actions such bodies can take in private session. (§§ 54954.2, 54956.7-54957.)

"Section 54952.2, subdivision (a) defines a 'meeting' for purposes of the Act as 'any congregation of a majority of the members of a legislative body at the same time and location, . . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.' Meetings, as so defined, are prohibited unless they are 'open and public.' (§ 54953, subd. (a).)" (*Olson*, *supra*, 33 Cal.App.5th at p. 514.)

"The agenda must contain 'a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.' (§ 54954.2, subd. (a)(1).) Importantly, with limited exceptions, '[n]o action or discussion

shall be undertaken on any item not appearing on the posted agenda.' (*Id*., subd. (a)(2)(E)(3).)

"Additionally, '[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.' (§ 54954.3, subd. (a).) This language has been construed to mean there must be a period of time provided for general public comment on any matter within the subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each specific agenda item before or during its consideration by the legislative body." (*Olson*, *supra*, 33 Cal.App.5th at p. 514, citing *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461, 468-469.)

B

Agenda Description

Plaintiff contends the District's January 2017 consent agenda does not comply with the Act because it does not list the individual items to be discussed and acted upon. We rejected this claim in *Olson* and concluded the agenda description did not violate section 54954.2 and thus the plaintiffs could not state a cause of action under the Act. (*Olson*, *supra*, 33 Cal.App.5th at pp. 520-521, 526-527.)

"The agenda described that the Board would '[a]pprove bills and authorize signatures on Warrant Authorization Form for District expenses received through January 24, 2017.' " (*Olson*, *supra*, 33 Cal.App.5th at p. 526.) As plaintiff's complaint and appellate briefing concede, this was the action the Board took. Just like Gifford in *Olson*, plaintiff's issue seems to be with the Board's treatment of its action to approve bills and signatures as a single item of business. (*Ibid.*)

"*San Joaquin Raptor Rescue Center* is instructive. There, the court found an agenda description lacking when it provided the planning commission would potentially approve a subdivision application to divide 380.45 acres into nine parcels. The agenda failed to mention the planning commission would also consider whether to adopt a mitigated negative declaration concerning the environmental impact of the project. [Citation.] At the meeting, the planning commission approved the project and adopted the mitigated negative declaration. [Citation.] When concluding the planning commission violated the Act, the court noted that the mitigated negative declaration was 'plainly a distinct item of business, and not a mere component of project approval, since it (1) involved a separate action or determination by the Commission . . . and (2) concerned discrete, significant issues of [California Environmental Quality Act (CEQA)] compliance and the project's environmental impact.' [Citation.]

"Similarly, in *Hernandez*, the court found an agenda insufficient when it described the council would discuss only a ' "Wal-mart Initiative Measure" and the direction to be given to staff' but failed to include that the council would also adopt a memorandum of understanding authorizing the acceptance of a gift from Walmart to pay for the special election to pass the initiative measure discussed. [Citation.] In concluding the adoption of the memorandum of understanding was an individual item of business that must be described in the agenda, the court noted the importance of the action adopting the memorandum of understanding and the gift's potential relationship to the council's ultimate decision to approve the initiative measure. [Citation.]

"In both cases, the local agency took separate action on a discrete item other than that published. (See § 54952.6 [defining action taken as 'a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance'].)" (*Olson*,

supra, 33 Cal.App.5th at pp. 526-527.) Here, the Board took one action. Plaintiff does not allege that by that action the Board approved new contracts, passed resolutions or ordinances, hired new employees, or acted upon any discrete item outside that which was described as the approval of bills and signatures "for District expenses received through January 24, 2017."

"This is enough to defeat [plaintiff's] argument the District was required to list its expenses as individual items . . . . Because the Board took one action on a single item, we rely on the language of the Act, which requires only 'a brief general description of each item of business to be transacted or discussed at the meeting, . . . [which] generally need not exceed 20 words.' (§ 54954.2, subd. (a)(1).) The District's January 2017 consent agenda met this standard." (*Olson*, *supra*, 33 Cal.App.5th at p. 527.)

C

Public Comment

Also like Gifford in *Olson*, plaintiff contends the District's public comment period violated the Act. We disagree.

"The Act requires there be time provided for public comment on any matter within the subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each agenda item before or during its consideration by the legislative body. (§ 54954.3, subd. (a); [citation].) Subdivision (b)(1) . . . expressly permits legislative bodies of local agencies to adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out. 'On the one hand, the Legislature declared the importance of open governance and the public's right to participate. On the other, it validated enactment of limits on public speakers so that the business of government could function.' [Citation.]

"Limiting public comment on items described in the agenda to the time when those items are being considered by the Board is not an unreasonable regulation. This ensures the Board has a clear and complete understanding of the public concern regarding

an item of business on the agenda at the time that item is to be transacted or discussed. Allowing public comment on agenda items during general public comment may defeat this purpose because it necessarily requires members of the Board to remember the comment for later action despite addressing other topics of public concern before that action can be addressed. Because the District provides the public comment periods required by the Act and its restrictions regarding those comment periods are reasonable," plaintiff has failed to allege a cause of action under the Act. (*Olson*, *supra*, 33 Cal.App.5th at pp. 527-528, fn. omitted.)

Unlike Gifford in *Olson*, plaintiff raises constitutional concerns arguing the District's prohibition on comments specific to items listed in the agenda during the general public comment period amounted to "topic/content-based restrictions (censorship) being imposed arbitrarily and capriciously in a public forum, absent a compelling state interest and without being narrowly drawn." Not so. Meetings under the Act are limited public forums, meaning they are "open to the public in general, but limited to comments related to the [public agency's] 'subject matter.' " (*Baca v. Moreno Valley Unified School Dist.* (C.D.Cal. 1996) 936 F.Supp. 719, 729.) "If the state does limit access to the forum based on subject matter or speaker identity, access limitations must be reasonable in light of the purpose served by the forum and must be viewpoint neutral." (*Id.* at pp. 728-729.)

As described, the limitation on the District's public comment was reasonable and further complied with the provisions of the Act. Additionally, the limitation was viewpoint neutral. Any person wishing to speak on the items appearing on the agenda were not limited to the viewpoints they could express, they were limited only to when they could express them during a public meeting. Thus, this case is not like *Baca*, on which plaintiff relies. There, the court found a school district's policy allowing for neutral comments or comments of praise, but not critical comments, about its employees was unconstitutional censorship. (*Baca v. Moreno Valley Unified School Dist.*, *supra*,

936 F.Supp. at pp. 727, 730.) Here, a commenter was free to express any viewpoint he or she wished. Thus, the District did not unconstitutionally censor comments through its public comment policy. Accordingly, the judgment of dismissal is affirmed.[4]

III

The Trial Court Did Not Err By Awarding Attorney Fees

Plaintiff contends the trial court erred by awarding attorney fees and costs to the District because it failed to state its reason for such an award on the record, and in any event, its ruling amounts to an abuse of discretion. We disagree on both points.

"Section 54960.5 states in part: 'A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.' The award pursuant to this statute is not mandatory; it is entrusted to the trial court's discretion." (*Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1120.)

Although there is no statutory requirement "of written findings or of findings placed on the record," cases have read this section as imposing sanctions, which require " 'that the person being sanctioned be told what conduct or circumstances justified the imposition of sanctions.' " (*Boyle v. City of Redondo Beach, supra,* 70 Cal.App.4th at

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[4] To the extent plaintiff argues in her reply brief that the trial court erred in dismissing her waste of taxpayer funds cause of action and ignored other viable causes of action, this claim lacks merit. As an initial matter, claims raised for the first time in a reply brief are forfeited, especially here where plaintiff does not articulate how the court erred or cite authority in support of that contention. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 408 [claim forfeited when raised for the first time on reply]; *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113 [claim forfeited when party failed to cite authority in support of argument].) Regardless, plaintiff's waste of taxpayer funds cause of action was premised upon the District's purported Act violations. Having found the District did not violate the Act, plaintiff's waste of taxpayer funds cause of action must necessarily fail as well.

p. 1120.) "Besides satisfying due process, the requirement that a court specify the circumstances justifying sanctions also enables the reviewing court to determine whether the award abused the trial court's discretion. [Citation.] 'Fairness and effective appellate review require that where the court exercises its discretion to issue sanctions, it delineate the specific acts upon which the sanctions are awarded.' " (*Ibid*.)

While plaintiff argues the trial court failed in this requirement, the record contradicts that claim. The court issued a four-page order detailing the reasons for imposing attorney fees. It found that plaintiff had filed previous complaints alleging similar violations on behalf of the District and that both cases had been dismissed following sustaining of the District's demurrers.[5] Additionally, the trial court found the merits of plaintiff's case were frivolous in that the agenda clearly stated the District would be paying its monthly bills and that was the exact action it took -- there was nothing misleading about the agenda's description given that there is no statutory requirement that the bills and amounts be listed individually. Further, members of the public were provided with a list of the specific bills to be paid, so it cannot be said that the public was lacking any knowledge regarding the District's expenses. Thus, the trial court provided specific reasons from which we may review the propriety of its attorney fee award.

Relying on *Crews*, plaintiff urges us to apply a de novo standard of review to the trial court's order arguing that the inquiry into the merits of her case amounts to a question of law. In *Crews*, we analyzed whether a plaintiff's suit was clearly frivolous using the de novo standard of review under the attorney fee provision of the Public

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5 The trial court took judicial notice of the litigation wherein plaintiff challenged the descriptions of items on the District's August and September 2016 agendas. On appeal, we reversed the trial court's dismissal of plaintiff's complaints concluding she stated a claim sufficient to survive a demurrer. (*Olson*, *supra*, 33 Cal.App.5th at p. 528.)

Records Act (§ 6259, subd. (d)). (*Crews v. Willows Unified School Dist.* (2013) 217 Cal.App.4th 1368, 1379.) That provision, however, is a mandatory attorney fee provision in the event the plaintiff has brought a frivolous claim. (§ 6259, subd. (d).) The Brown Act's attorney fee provision, however, is discretionary, which is why a statement of reasons is required so that the trial court's decision may be adequately reviewed. (*Boyle v. City of Redondo Beach*, *supra*, 70 Cal.App.4th at p. 1120.) The abuse of discretion standard is appropriate in this context.

"Discretionary decisions are subject to an abuse of discretion standard of review, and will not be reversed on appeal unless it appears that the court abused its discretion and a miscarriage of justice has resulted. [Citation .] ' "Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." ' " (*Silver v. Boatwright Home Inspection, Inc.* (2002) 97 Cal.App.4th 443, 449, quoting *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

That being said, the rule adopted in *Crews* defining "clearly frivolous" as used in both the Public Records Act and the Brown Act is applicable to this case. *Crews* took the definition from our Supreme Court's decision *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, where it explained, " '[a]n appeal that is simply without merit is *not* by definition frivolous and should not incur sanctions. Counsel should not be deterred from filing such appeals out of a fear of reprisals. Justice Kaus stated it well. In reviewing the dangers inherent in any attempt to define frivolous appeals, he said the courts cannot be "blind to the obvious: the borderline between a frivolous appeal and one which simply has no merit is vague indeed . . . . The difficulty of drawing the line simply points up an essential corollary to the power to dismiss frivolous appeals: that in all but the clearest

cases it should not be used." [Citation.] The same may be said about the power to punish attorneys for prosecuting frivolous appeals: the punishment should be used most sparingly to deter only the most egregious conduct.' " (*Crews v. Willows Unified School Dist.*, *supra*, 217 Cal.App.4th at pp. 1380-1381.) Thus, our Supreme Court held "that an appeal may be deemed frivolous only when prosecuted for an improper motive -- e.g., to harass the respondent or for purposes of delay -- *or* when lacking any merit -- i.e., when any reasonable attorney would agree the appeal is totally without merit." (*Id.* at p. 1381.)

We will not consider the trial court's finding regarding the judicial notice of cases filed by plaintiff that were dismissed. We subsequently reversed those judgments finding merit in plaintiff's claims sufficient to survive a demurrer, thus those cases cannot serve as the basis for an attorney fee award. (*Olson*, *supra*, 33 Cal.App.5th at pp. 521, 525-527.)

The question now becomes whether the trial court's stated reasons regarding the merits of plaintiff's complaint in *this case* were a sufficient basis to award the District attorney fees. We conclude it was because the rule adopted in *Crews* allows for a finding of frivolousness based solely on the merits of a plaintiff's case, thus the trial court did not abuse its discretion when making that finding here.

As the trial court described, the Act's purpose is to ensure the actions of the local agencies are open and public and that the public has a meaningful opportunity to participate in its governing body's deliberations. To this end, the public agency must post an agenda with a brief description of each "item of business to be transacted or discussed at the meeting." (§ 54954.2, subd. (a)(1).) Plaintiff argued that each individual monthly expense of the District constituted an item of business that needed to be described in the agenda. As discussed, the Act contains no such requirement. What the Act requires is enough notice to members of the public so that they will not be confused about the action the Board is taking and can participate in that action if they choose. (See *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196, 199 ["It is now the rule

that local governing bodies, elected by the people, exist to aid in the conduct of the people's business, and thus their deliberations should be conducted openly and with due notice with a few exceptions"].) Here, the agenda provided the Board would approve payment of the District's monthly expenses as it appears on the warrant authorization form. As the trial court found, no member of the public could have been confused regarding that action and if a member wished to participate in the District's payment of monthly expenses, he or she would know to go to the meeting so he or she may be heard. As our prior opinion concluded, not only did this description substantially comply with the Act so that plaintiff cannot nullify the Board's action pursuant to section 54960.1, but it strictly complied with the Act's notice requirements so that plaintiff is not entitled to a declaration pursuant to section 54960. (*Olson*, *supra*, 33 Cal.App.5th at pp. 518, 520-521, 526.)

Plaintiff did not allege that the Board took action other than that listed or that she was confused by the agenda description or prevented from attending the meeting because of a lacking agenda description. Instead, she stated she would prefer the District's agenda look like the Siskiyou County Board of Supervisor's agenda for its meetings and list "each item to be considered and acted upon" in the consent agenda. That consent agenda, which plaintiff attached to her complaint, does not list payments to be made under existing contracts, but rather approval of contracts, adoption of proclamations, resolutions, and letters, and transfer of funds to community programs. Nowhere in plaintiff's example of a "proper 'consent agenda' " is there an item to approve the payment of monthly expenses. Conversely, the District listed all other items besides approval of the payment of its monthly expenses (such as adoption of resolutions) as items to be acted on after discussion and public comment. Thus, even under plaintiff's own example, the District provided more notice and opportunity for public participation.

Similarly, the District provided for the exact public comment period articulated in the Act. (§ 54954.3, subd. (a).) Again, it was plaintiff's preference not to wait until

individual items came up for discussion that prompted her suit. The District's agenda did not prevent plaintiff from voicing her complaints but merely subscribed them to specific times during the meetings.

Accordingly, substantial evidence supports the trial court's finding plaintiff's suit lacked any merit. Further, because the rule allows a frivolous finding based solely on a meritless suit, the trial court did not abuse its discretion even though we subsequently reversed the judgments in plaintiff's other suits against the District undercutting the trial court's finding that plaintiff's suit was filed to harass the District. Thus, the trial court's order awarding attorney fees is affirmed.

DISPOSITION

The judgment of dismissal and order awarding attorney fees are affirmed. Costs are awarded to the District. (Cal. Rules of Court, rule 8.278(a)(2).)

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Duarte, J.